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them must be a party to the suit, but, in a foot-note, adds that there is no fixed rule in Virginia as to the time or order in which depositions are required to be taken to be read in a suit in chancery, and deplores the lack of such a rule. Sands Suit in Equity (2d ed.) 468, says that the section above quoted authorizes the taking of depositions in chief from the time of the institution of the suit, certainly from the time of the filing of the bill, even before the parties are at issue. In Hogg's Equity Procedure, sec. 479, it is said: "While it is settled on authority that a deposition may be taken after the bill has been filed (*Buster v. Holland*, 27 W. Va. 535), in view of a fact that a suit is pending upon the issuance of the summons (sec. 3223 of the Code), there does not seem to be any good reason why the deposition should not be properly taken after the issuance of the summons, and before the filing of the bill (*Mumford v. Church*, 1 Johns. Cas. 147, 1 Law Ed. 278). It has been decided that a deposition taken before an amended and supplemental bill has been filed, may be read in support of such bill (*Hatcher v. Crews*, 78 Va. 467)." By reference to 6 Encyc. of Pl. & Pr., 484-485, it will be seen that the decisions of the State courts are not harmonious as to the time when depositions may be taken under the various statutes. In the English Chancery, depositions could not be taken before the answer was filed. They might be taken *de bene esse* before answer, but these could not be read at the trial unless the cause for the taking continued. *Nave v. Nave*, 7 Ind. 123, citing 1 Harr Ch. Pr. 370.

In the recent case of *Anderson v. Anderson*, Judge Grinnan, of the Chancery Court of the City of Richmond, decided that depositions could be taken after the bill had been filed and *before* the case had been docketed. The terms of the statute seem to be broad enough to cover not only this case, but even to allow depositions to be taken at any time after the filing of memorandum, for a suit is then "pending." But such practice would be objectionable in the extreme, for the defendant would then have to hear and cross-examine the complainant's witnesses without being apprised of the allegations he is expected to meet.

C. B. G.

ATTACHMENTS—QUÆRE: MAY MOTION TO QUASH BE HEARD IN CASE OF ATTACHMENT FOR RENT?—SECTIONS 2981 AND 2962 OF CODE.—In the recent case of *Rose v. Snead*, in the Circuit Court of the city of Richmond, Judge Scott held that section 2981, providing for the abating of an attachment, when the court is of opinion that the attachment was issued on false suggestions, or without sufficient cause, was applicable in case of attachment for rent under section 2962. A history of the statutes on attachments is essential to the proper understanding of the question presented. Under 1 Revised Code, 1819, p. 448, sec. 9, which is now sec. 2962 of the Code, was in a separate chapter from the other provisions in regard to attachments, and the section allowing a defence to be made to attachments may be found in Revised Code 1819, p. 478, sec. 12, which corresponds to the present sec. 2981. In *Redford v. Winston*, 3 Rand. 148, decided in 1825, it was held that the defendant in the case of an attachment for rent could not plead that the attachment was issued on false suggestions, and that the aforesaid section 12, of 1 Revised Code 1819, p. 478, was not applicable as in other cases of attachments, but that the defendant was left to his action on the attachment bond. To cure

this defect in the law, an act (1826-7, p. 26) was passed, which provided that the defendant in attachment for rent could move to abate just as in all other cases, and a further statute was enacted along the same lines February 6, 1841. (See Acts 1841, p. 77.) When the Code was revised in 1849, the sections providing for attachments for rent were incorporated in the same chapter with the other sections on attachments and sections 2979-80-1 of the Code, as at present, were substantially enacted as sections 20, 21, 22, respectively, of the Code of 1849, p. 606, Chap 151. The wording of section 2981 is, "The right to sue out any such attachment may be contested," etc. Referring back to sec. 2980, that begins, "Either of the defendants in any such attachment . . . may make a defence," etc., and sec. 2979 begins, "When an attachment, except under sections 2961-2 is returned executed . . . an order of publication shall be made against him." It was contended in the aforesaid case in the Circuit Court of the city of Richmond that the word 'such' limited the power to make the defence to attachments referred to in sec. 2979; but the learned judge, after looking up the history of the statute, decided in accordance with Daniel on Attachments, sections 190-91, pp. 125-6-7; 4 Minor (3d ed.), pp. 155-6-7, that the right to sue out the attachment may be contested in all cases, and that the word 'such' did not limit or exclude the right to make the defence in the case of attachments for rent. See, also, *Cluflin v. Steenbock*, 18 Gratt. 842, 863. By referring to the Report of the Revisers, p. 760, we find that sec. 19 of the report, which became sec. 20 of the Code of 1849, and sec. 2979 of the Code of 1887, reads as follows: "When any attachment shall be returned executed (otherwise than by service on an absent or absconding debtor), an order of publication shall be made against such debtor." Sections 20-1 of the Report of the Revisers became sections 21-2 of the Code of 1849, and sections 2980-81, respectively of the Code of 1887. In a note to sec. 21 of the Report of the Revisers they say: "A different rule as to attachments was laid down in *Redford v. Winston*, 3 Rand, 148. By the section as proposed by us, an attachment for rent, issued without sufficient cause, is placed upon the same footing as any other attachment." (Report of the Revisers, Code 1849, p. 760). When the legislature adopted these three sections of the report they inserted in sec. 19 of the report, which, as said before, became sec. 20 of the Code of 1849, the words, "except under sections 3 and 4," and left in the two following sections the word "such." Therefore, while it is perfectly plain that the word "such" in the Report of the Revisers referred to any attachment, it is not so clear that the presence of that word in the Code does not limit the right to make the defence to those cases provided for in what is now sec. 2979 of the Code. In other words, the intention of the revisers may have been defeated by the insertion of these exceptions, and the fact that the legislature did insert these exceptions would seem to lend weight to the view that the word "such" was necessarily used as a word of limitation. This view would be harsh in its operation, and especially if it is made to apply to sec. 2980. In view of the history of these sections it would seem that it would be better if the legislature, in order to remove any possible doubt, would eliminate the word "such" from sec. 2980 and sec. 2981. As at present constituted, either it has no meaning at all in those sections, or it must be taken with reference to section 2979. If it has no meaning at all, it should be eliminated. If it is meant to be taken with reference to the exceptions in sec. 2979, the law is imperfect and should be amended.

C. B. G.